

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE**

D.H.,

Plaintiff,

v.

WILLIAMSON COUNTY
BOARD OF EDUCATION, *et al.*,

Defendants.

Case No. 3:22-cv-00570
District Judge William L. Campbell, Jr.
Magistrate Judge Jeffery S. Frensley

**THE DEPARTMENT AND COMMISSIONER OF EDUCATION'S
MOTION TO DISMISS**

Pursuant to Fed. R. Civ. P. 12(b)(6), Defendant Tennessee Department of Education and Defendant Penny Schwinn, in her official capacity as Commissioner of the Department of Education, move for an order from this Court dismissing the claims asserted against them in this lawsuit for failure to state a viable claim to relief. As the arguments and authorities set out in the accompanying Memorandum of Law demonstrate, Plaintiff D.H.'s equal protection claim fails as a matter of law because the Constitution allows the long-standing practice of separating bathrooms by sex—a practice D.H. does not even challenge—and D.H.'s allegations and alternative theories all fail to support this claim. Plaintiff's Title IX claim fails as a matter of law because Title IX explicitly allows schools to maintain sex-separated bathrooms, and, in any event, the separation of

bathrooms based on sex is not “discrimination” under Title IX. Because Plaintiff cannot cure the defects in the complaint, dismissal should be with prejudice.

Dated: October 25, 2022

Respectfully Submitted,

JONATHAN SKRMETTI
Tennessee Attorney General & Reporter

ANDRÉE S. BLUMSTEIN
Tennessee Solicitor General

JAMES MATTHEW RICE
Special Assistant to the Solicitor General

GABRIEL KRIMM
Assistant Solicitor General

/s/ Alexander S. Rieger
ALEXANDER S. RIEGER
Senior Assistant Attorney General
Office of the Tennessee
Attorney General & Reporter
P.O. Box 20207
Nashville, TN 37202-0207
(615) 741-2408
BPR No. 029362
Alex.Rieger@ag.tn.gov

*Counsel for the Tennessee Department
and Commissioner of Education*

CERTIFICATE OF SERVICE

I certify that I filed the above document using the Court's CM/ECF system on October 25, 2022, which electronically served a copy to all counsel of record, namely:

Adam S. Lurie
Ami Rakesh Patel
Jason Starr
Sean Mooney
Tricia Herzfeld
Counsel for D.H.

Courtney M. King
Lisa M. Carson
*Counsel for the Williamson County
Board of Education and
Jason Golden in his official capacity as
Director of the Williamson County Schools*

James Matthew Rice
Alexander Stuart Rieger
Gabriel Krimm
*Counsel for the Tennessee
Department of Education and
Penny Schwinn in her official capacity as
Commissioner of the Tennessee
Department of Education*

/s/Alexander S. Rieger
Alexander S. Rieger